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CORNELL WELLS, JR.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CORNELL WELLS, JR.,

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS, a not-for-profit corporation,
FEDERATION OF STATE MEDICAL
BOARDS, INC., a not-for-profit corporation,

Defendants.

Case No. 3:21-cv-01279-JSC

**UPDATED JOINT CASE MANAGEMENT
STATEMENT**

Date: November 18, 2021
Time: 1:30 p.m.
Judge: Hon. Jacqueline Scott Corley

1. JURISDICTION & SERVICE

The parties have no new, additional information to provide to the Court that was not included in their initial Joint Case Management Statement or their prior Updated Joint Case Management Statement.

2. FACTS

Subsequent to the initial Case Management Conference, Dr. Wells was granted a medical license in Colorado, on September 1, 2021, and in New York on September 14, 2021. He is awaiting decisions in two other states to which he has applied for licensure, one of which is California. Apart from this, the parties have no new, additional information to provide to the Court that was not included in their initial Joint Case Management Statement or in the prior Updated Joint Case Management Statement. Both sides reserve the right to supplement factual details as they are learned through discovery.

3. LEGAL ISSUES

The legal issues remain the same as stated in the parties' initial Joint Case Management Statement.

4. MOTIONS

| | | |
|-----------|--|--|
| 2/23/2021 | Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Dkt. 5) | Granted 2/24/21 (Dkt. 10) |
| 4/9/2021 | NBME's Motion for Leave to Appear Pro Hac Vice (Robert Burgoyne) (Dkt. 22) | Granted 4/13/21 (Dkt. 23) |
| 5/4/21 | FSMB's Motion for Leave to Appear Pro Hac Vice (Robert Burgoyne) (Dkt. 30) | Granted 5/5/21 (Dkt. 31) |
| 9/30/21 | Plaintiff's Motion for Leave to File First Amended Complaint (Dkt. 43) | Fully briefed and pending -- Zoom hearing scheduled on motion for 11/18/21 |

1 **5. AMENDMENT OF PLEADINGS**

2 See summary of motions in 4, above, discussing Plaintiff's pending motion to file an
3 amended complaint.

4 **6. EVIDENCE PRESERVATION**

5 Plaintiff's/Defendants' Agreed Position

6 Plaintiff believes that the parties need to confer further regarding electronically stored
7 information, with specific reference to the Court's Rule 26(f) Checklist. Defendants disagree that
8 additional discussions are needed but have stated that they are willing to confer further.
9 Plaintiff's counsel has not yet contacted Defendant's counsel to schedule a further discussion of
10 issues pertaining to electronically stored information.
11

12 **7. DISCOVERY**

13 Plaintiff's Position:

14 Protective Order: The parties have not yet executed a stipulated protective order. The
15 Order would apply to Plaintiff's confidential medical information and also to any confidential
16 information of the Defendants that falls within the scope of the order. Defendants' counsel has
17 requested that Plaintiff's counsel provide a proposed Protective Order to review, and Plaintiffs'
18 counsel position is that the Court's approved form of Protective Order with some minor revisions
19 should be sufficient. Plaintiff's counsel will provide the proposed Protective Order with any
20 changes to Defendants' counsel in advance of the upcoming Case Management Conference

21 To facilitate third-party discovery, Defense counsel provided a draft Disclosure
22 Authorization Form to Plaintiff's counsel on August 17, 2021. Due to unanticipated events,
23 Plaintiff's counsel was not able to provide any comments on the draft until September 23, 2021.
24 It is anticipated that the issues pertaining to the Disclosure Authorization Form can be worked out
25 cooperatively, but if not, counsel will be prepared to discuss the issues at the CMC.

26 Defendants' Position:

27 As noted above under "Plaintiff's Position," Defendants' counsel sent Plaintiff's counsel a
28

1 draft Disclosure Authorization Form on August 17, 2021. The form was sent shortly after the
2 initial case management conference, during which Plaintiff's counsel urged the Court to put a
3 more expedited schedule in place than the schedule proposed by Defendants, and Defendants'
4 counsel stated that third-party discovery would be greatly facilitated (and expedited) if Plaintiff
5 executed a disclosure authorization form.
6

7 As also noted above under "Plaintiff's Position," Plaintiff's counsel did not respond to the
8 draft Disclosure Authorization Form for roughly five weeks, sending feedback on September 23,
9 2021, in advance of a then-scheduled Case Management Conference on September 30, 2021. The
10 Court subsequently rescheduled that Case Management Conference to November 18, 2021.
11

12 On October 5, 2021, Defendants' counsel sent a revised draft of the Disclosure
13 Authorization Form, under a covering email that stated as follows: "Eric, I am forwarding a
14 revised Disclosure Authorization Form which responds to the concerns you raised in your note
15 below (redline and clean version attached). Please review this as soon as possible, as we would
16 like to begin sending out our third-party discovery requests. Your note below also references
17 getting a Stipulated Protective Order in place. Please send me a draft as soon as you can and we
18 will review and provide any comments."
19

20 On October 18, 2021, having had no response from Plaintiff's counsel, Defendants'
21 counsel re-sent the October 5 email and revised Disclosure Authorization Form to Plaintiff's
22 counsel, stating as follows: "Eric, I am resending the message, below, as I have not yet had a
23 response from you. Please respond as soon as possible."
24

25 On October 27, 2021, having still had no response from Plaintiff's counsel, Defendants'
26 counsel sent another email message to Plaintiff's counsel. This message forwarded the
27 Defendants' initial set of discovery requests directed to Plaintiff and again asked Plaintiff to
28 return the signed Disclosure Authorization Form to facilitate Defendants' third-party discovery.

1 The email stated as follows:

2 "Hello Eric,

3 I have attached the defendants' initial requests for admissions, interrogatories, and
4 requests for documents, all directed to Dr. Wells.
5

6 As noted in prior emails, we would also like to begin our third-party discovery but have
7 been waiting for an executed disclosure authorization form from Dr. Wells to facilitate that
8 process. Please send me the executed disclosure authorization form as soon as possible, or
9 provide specific comments on the revised form that I sent to you on **October 5**. The revised form
10 reflected changes that I made in response to the concerns you expressed regarding the original
11 draft form that I sent you on **August 17**. You did not provide those concerns until **September 23**,
12 which was more than a month after you received the initial draft of the disclosure authorization
13 form. We discussed our desire to obtain a disclosure authorization form from Dr. Wells during
14 the last status conference with the Court, and my recollection is that you agreed to work with us
15 in getting such a form executed by Dr. Wells. More than two months have gone by since I sent
16 you a proposed form, and we still don't have an executed form from Dr. Wells.
17

18 Thank you.

19 Bob"
20

21 Almost three months have now passed since Defendants' counsel sent Plaintiff's counsel
22 the initial draft Disclosure Authorization Form which Plaintiff's counsel responded to roughly
23 five weeks later. Another month+ has passed since Defendants' counsel sent Plaintiff's counsel a
24 revised draft of the Disclosure Authorization Form, in which changes were made to respond to
25 the concerns he raised. As of November 9, 2021, Defendants have had no written or oral
26 response to their revised Disclosure Authorization Form, nor have they received a signed version
27 of the Form.
28

1 Likewise, Defendants have not received a draft Protective Order from Plaintiff, despite
2 asking that one be provided in an email message dated October 5, 2021.

3
4 **8. CLASS ACTIONS**

5 Plaintiff's Position:

6 Plaintiff's pending, proposed First Amended Complaint seeks to pursue this litigation on a
7 class-action basis for the reasons stated in Plaintiff's pending motion seeking leave to amend.

8 Defendants' Position:

9 If the Court grants Plaintiff's Motion for Leave to File a First Amended Complaint,
10 Defendants will vigorously oppose class certification. Under the Americans with Disabilities
11 Act, decisions on accommodation requests must be made on a case-by-case basis and are, by
12 definition, individualized. Defendant also notes that the schedule reflected in the Court's initial
13 scheduling order would need to be revised considerably if the Court grants Plaintiff's Motion for
14 Leave to File a First Amended Complaint.
15

16
17 **9. RELATED CASES**

18 The parties have no new, additional information to provide to the Court that was not
19 included in their initial Joint Case Management Statement.

20 **10. RELIEF**

21 The parties have no new, additional information to provide to the Court that was not
22 included in their initial Joint Case Management Statement.
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11. SETTLEMENT AND ADR

Counsel have met and conferred regarding ADR and have agreed to informally attempt resolution of this matter on their own between now and November 15, 2021. If the matter has not been resolved by November 15, 2021, counsel have agreed the matter should be referred to a Magistrate Settlement Conference.

12. CONSENT TO MAGISTRATE FOR ALL PURPOSES

The parties have already consented to a magistrate judge conducting all further proceedings.

13. OTHER REFERENCES

None.

14. NARROWING ISSUES

The parties have no new, additional information to provide to the Court that was not included in their initial Joint Case Management Statement.

15. EXPEDITED TRIAL PROCEDURE

The parties have no new, additional information to provide to the Court that was not included in their initial Joint Case Management Statement.

16. SCHEDULING

The Court has issued a Pre-Trial Order setting forth scheduling. The parties agree that this schedule will need to be revised, but they have not met and conferred regarding these revisions.

17. TRIAL

Trial of this matter may take longer than the current estimate, if the Court grants Plaintiff's Motion for Leave to File a First Amended Complaint.

18. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

The parties have no new, additional information to provide to the Court that was not included in their initial Joint Case Management Statement.

19. PROFESSIONAL CONDUCT

All attorneys of record for the parties have reviewed the Guidelines for Professional

1 Conduct for the Northern District of California.

2
3 DATED: November 10, 2021

PERKINS COIE LLP

4
5 By /s/ Robert A. Burgoyne
6 Aaron J. Ver
7 Robert A. Burgoyne

8 Attorneys for Defendants
9 NATIONAL BOARD OF MEDICAL
10 EXAMINERS, and FEDERATION OF
11 STATE MEDICAL BOARDS, INC.

12 DATED: November 10, 2021

YOUNG LAW GROUP

13 By /s/ Eric G. Young
14 Eric G. Young

15 Attorneys for Plaintiff
16 CORNELL WELLS, JR.